BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

M E M O R A N D U M

TO: Director John Arntz, Department of Elections

FROM: Victor Young, Assistant Clerk

DATE: December 17, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 211303

Ordinance amending the Municipal Elections Code to require the Director of Elections to submit information documenting the City's intended open source voting pilot program to the California Secretary of State, on behalf of the Board of Supervisors, and, upon approval of the Secretary of State, to implement such a system for use at the November 8, 2022, election.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

File Number: 211303	**File Type:** Ordinance		**Status:** Pending Committee Action
Enacted:			**Effective:**
Version: 1	**In Control:** Rules Committee		
File Name: Municipal Elections Code - Open Source Voting			**Date Introduced:** 12/14/2021
Requester:	**Cost:**		**Final Action:**

Comment:

Title: Ordinance amending the Municipal Elections Code to require the Director of Elections to submit information documenting the City's intended open source voting pilot program to the California Secretary of State, on behalf of the Board of Supervisors, and, upon approval of the Secretary of State, to implement such a system for use at the November 8, 2022, election.

Sponsor: Walton

History of Legislative File 211303

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	12/14/2021	ASSIGNED	Rules Committee		

12/16/21 - President Walton waived the 30-day rule pursuant to Board Rule No. 3.22.

1   [Municipal Elections Code - Open Source Voting]

2

3   **Ordinance amending the Municipal Elections Code to require the Director of Elections**

4   **to submit information documenting the City's intended open source voting pilot**

5   **program to the California Secretary of State, on behalf of the Board of Supervisors,**

6   **and, upon approval of the Secretary of State, to implement such a system for use at the**

7   **November 8, 2022, election.**

8   NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
                       Additions to Codes are in _single-underline italics Times New Roman font_.
9   **Deletions to Codes** are in ~~_strikethrough italics Times New Roman font_~~.
                       Board amendment additions are in <u>double-underlined Arial font</u>.
10   **Board amendment deletions** are in ~~strikethrough Arial font~~.
                       Asterisks (*   *   *   *) indicate the omission of unchanged Code
11   subsections or parts of tables.

12

13   Be it ordained by the People of the City and County of San Francisco:

14

15   Section 1. The Municipal Elections Code is hereby amended by adding Article XII,

16   consisting of Sections 1200, 1201 and 1202, to read as follows:

17

18   _**ARTICLE XII: OPEN SOURCE VOTING PILOT PROGRAM**_

19   _**SEC. 1200.   FINDINGS.**_

20   _(a) Since 2007, the Board of Supervisors ("Board") has shown interest in developing and using_

21   _open source voting systems in the City and County of San Francisco ("the City"). In 2007, the City_

22   _adopted Resolution No. 330-07, supporting an investigation into the feasibility of an open source voting_

23   _system. In 2008, the City enacted Ordinance No. 268-08, creating a Voting Systems Task Force_

24   _("VSTF") that provided the City with recommendations on models for development of a voting system,_

25   _including proprietary, disclosed, and open source software and hardware. In June 2011, the VSTF_

1 *issued "Recommendations on Voting Systems for the City and County of San Francisco," a report*

2 *summarizing their recommendations. This report is available with the Clerk of the Board in File No.*

3 *110805. In 2014, the City adopted Resolution No. 460-14, committing the City to work with other*

4 *jurisdictions and organizations to create new voting systems using open source software. The*

5 *Elections Commission ("Commission") has also passed resolutions in support of open source voting in*

6 *2007, 2015, and 2018. These Commission resolutions are with the Clerk of the Board in the file for the*

7 *ordinance establishing this Article XII, File No. __.*

8 *(b) Under California Elections Code Section 19209, to conduct an open source pilot program,*

9 *the Board, without formally adopting a voting system, may provide for the experimental use of the*

10 *voting system in a pilot program held in one or more precincts at a single election. Among other*

11 *criteria, the voting system must meet the requirements of regulations adopted by the California*

12 *Secretary of State ("SOS"). Under the California Elections Code, the Board must submit to the SOS a*

13 *plan for the pilot program no later than nine months before the election at which the pilot program is*

14 *proposed to be conducted; after submittal of such a plan, the SOS would have up to three months to*

15 *approve or reject it. But, as of December 14, 2021, the SOS had not yet issued the regulations required*

16 *for any pilot program, as required by the California Elections Code.*

17 *(c) On November 12, 2021, the SOS distributed a public letter confirming that it has begun the*

18 *process of drafting the necessary regulations for a pilot program. This letter from the SOS is on file*

19 *with the Clerk of the Board in File No. ___. The letter also explained that while regulations have not*

20 *yet been adopted, there are two available paths to move forward with an open source pilot program.*

21 *First, the City or the open source voting system provider may submit a voting system for testing and*

22 *review for certification by the SOS. Second, the City or the open source voting system provider may*

23 *outline and document the intended voting system equipment, implementation, and use, and provide that*

24 *information to the SOS for feedback.*

25

1	*(d) As of December 14, 2021, the SOS had not approved a pilot program for an open source or*
2	*disclosed source voting system. The City is hoping to be the first to conduct a pilot program in*
3	*conjunction with a future election. Conducting this pilot program would advance the Board's and the*
4	*Commission's long-term goal of moving towards open source voting systems for City elections.*
5	***SEC. 1201. DEFINITIONS.***
6	*For purposes of this Article XII, the following terms have the following meanings:*
7	*"Ballot marking device" shall mean voting equipment used by voters to record votes on paper*
8	*ballots.*
9	*"Disclosed source voting system" shall mean a voting system subject to licenses that allow the*
10	*public to review all of its source code and the ability to share all source code with other parties.*
11	*Disclosed source voting systems may incorporate software that has a proprietary license that would*
12	*restrict the users' ability to copy or modify its source code.*
13	*"Open source" shall mean the software's source code is available for use, study, re-use,*
14	*modification, enhancement, and re-distribution and is subject to one or more licenses approved by the*
15	*Open Source Initiative.*
16	*"Open source voting system" shall mean a voting system (a) whose software is open source;*
17	*and (b) whose electronic hardware is off-the-shelf and publicly available.*
18	*"Secretary of State" shall mean the California Secretary of State.*
19	*"Source code" shall mean the version of a computer program in which the programmer's*
20	*original programming statements are expressed in a source language (e.g. C++, C#, Visual Basic or*
21	*Java) which must be compiled or assembled and linked into equivalent machine-executable object*
22	*code, thereby resulting in an executable software program.*
23	*"Voting system" means a mechanical, electromechanical, or electronic system and its software,*
24	*or any combination of these used for casting a ballot, tabulating votes, or both. "Voting system" does*
25	*not include a remote accessible vote by mail system.*

1   ***SEC. 1202. SUBMISSION OF PLAN FOR INTENDED OPEN SOURCE VOTING PILOT***

2   ***PROGRAM .***

3   *(a) For the purposes of this Article XII, the intended open source voting pilot program shall*

4   *consist of a minimum of one open source ballot marking device that the City wishes to use at the City*

5   *Hall Voting Center for the November 8, 2022 Consolidated General Election. The Director of*

6   *Elections shall have discretion to decide if more than one ballot marking device will be utilized during*

7   *the open source pilot program and where to place the ballot marking device(s), based upon*

8   *accessibility, security, and staffing requirements. But, to the extent feasible, an open source ballot*

9   *marking device shall be available to any voter that wants to use the device at the City Hall Voting*

10   *Center.*

11   *(b) By no later than February 8, 2022, the Director of Elections shall submit information to the*

12   *SOS that describes a plan for the City's intended open source voting pilot program, as set forth in*

13   *subsection (a). The SOS must adopt regulations for open source voting pilots, and approve the City's*

14   *plan for the intended open source voting pilot program, in order for the Department of Elections to*

15   *deploy the open source ballot marking device(s) at the November 8, 2022 Consolidated General*

16   *Election for the public's use.*

17   *(c) The Director of Elections' plan for the intended open source voting pilot program shall*

18   *include information that outlines and documents the City's intended open source voting system*

19   *equipment, implementation, and use. The information shall include at a minimum: (a) a list of each*

20   *piece of hardware, software, and firmware that will be used and how each complies with the*

21   *requirements of California Elections Code Sections 19209 and 19212, and (b) draft use procedures on*

22   *how the system will be implemented and used by the Department of Elections and poll workers. The*

23   *use procedures shall conform to the SOS's template available on the SOS website. This template is on*

24   *file with the Clerk of the Board in File No.____.*

25

1   Section 2. Effective Date

2   This ordinance shall become effective 30 days after enactment. Enactment occurs

3   when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not

4   sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the

5   Mayor's veto of the ordinance.

6

7   APPROVED AS TO FORM:
     DAVID CHIU, City Attorney
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9   By: /s/_____
            ANA FLORES
10   Deputy City Attorney

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<u>LEGISLATIVE DIGEST</u>

[Municipal Elections Code - Open Source Voting]

Ordinance amending the Municipal Elections Code to require the Director of Elections to submit information documenting the City's intended open source voting pilot program to the California Secretary of State, on behalf of the Board of Supervisors, and, upon approval of the Secretary of State, to implement such a system for use at the November 8, 2022, election.

<u>Existing Law</u>

In general, the California Secretary of State ("SOS") must certify any voting systems before they are used in any elections held in California. Voting systems include hardware, software and combinations thereof used to either cast a ballot or tabulate votes.

But under Elections Code Section 19209 ("Section 19209"), the Board of Supervisors, without formally adopting a voting system, may provide for the experimental use of the voting system in a pilot program held in one or more precincts at a single election. The Board of Supervisors may proceed with such a pilot, even if the voting system has not been certified, if the pilot:

- uses only software and firmware with disclosed source code, except for unmodified commercial off-the-shelf software and firmware;
- meets the requirements set forth in the SOS's voting system standards, adopted pursuant to Elections Code Section 19101(b);
- meets the requirements of the SOS's regulations governing voting system pilot programs, adopted pursuant to Elections Code Section 19209(g); and
- implements risk-limiting audits.

As of December 14, 2021, the SOS had not adopted regulations governing disclosed source voting system pilot programs.

Section 19209 also requires the Board of Supervisors to submit any plan for a pilot program no later than nine months before the election at which the pilot program of a voting system is proposed to be conducted. The Secretary of State would then have up to three months to approve or reject the plan.

<u>Amendments to Current Law</u>

The proposed ordinance would require the Director of Elections, on behalf of the Board of Supervisors, to submit information documenting the City's intended open source voting pilot program to the California Secretary of State by February 8, 2022. For the purposes of this

proposed plan, the intended open source voting pilot program would consist of at least one open source ballot marking device that the City would use at the City Hall Voting Center for the November 8, 2022 Consolidated General Election. The deployment of the open source ballot marking device(s) at the November 8, 2022 Consolidated General Election would be subject to the SOS's adoption of regulations for disclosed source voting system pilots and the SOS's approval of the City's plan.

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President, District 10
BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Tel. No. 554-6516
Fax No. 554-7674
TDD/TTY No. 544-6546

SEAL OF THE CITY AND COUNTY OF SAN FRANCISCO

Shamann Walton

PRESIDENTIAL ACTION

Date: 12/16/2021

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,
Pursuant to Board Rules, I am hereby:

☒ Waiving 30-Day Rule (Board Rule No. 3.23)

File No.	211303	Walton
		(Primary Sponsor)

Title. [Municipal Elections Code - Open Source Voting]

☐ Transferring (Board Rule No 3.3)

File No.		
		(Primary Sponsor)

Title.

From: _____ Committee
To: _____ Committee
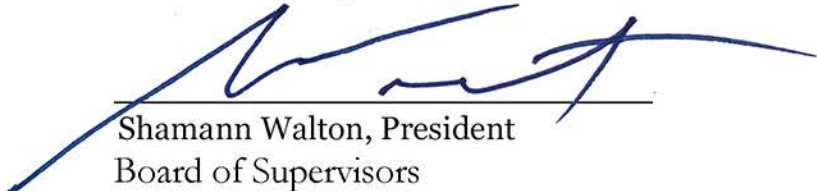
☐ Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor: _____   Replacing Supervisor: _____

For: _____ _____ Meeting
    (Date)   (Committee)

Start Time: _____ End Time: _____

Temporary Assignment: ⭘ Partial   ⭘ Full Meeting

Shamann Walton, President
Board of Supervisors

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

[✓] 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).

[ ] 2. Request for next printed agenda Without Reference to Committee.

[ ] 3. Request for hearing on a subject matter at Committee.

[ ] 4. Request for letter beginning :"Supervisor [   ] inquiries"

[ ] 5. City Attorney Request.

[ ] 6. Call File No. [   ] from Committee.

[ ] 7. Budget Analyst request (attached written motion).

[ ] 8. Substitute Legislation File No. [   ]

[ ] 9. Reactivate File No. [   ]

[ ] 10. Topic submitted for Mayoral Appearance before the BOS on [   ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

[ ] Small Business Commission   [ ] Youth Commission   [☒] Ethics Commission

[ ] Planning Commission   [ ] Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Walton

Subject:

Municipal Elections Code - Open Source Voting

The text is listed:

Ordinance amending the Municipal Elections Code to require the Director of Elections to submit information documenting the City's intended open source voting pilot program to the California Secretary of State, on behalf of the Board of Supervisors, and, upon approval of the Secretary of State, to implement such a system for use at the November 8, 2022 election.

Signature of Sponsoring Supervisor: /s/ Shamann Walton

For Clerk's Use Only

Good afternoon,

Confirming that the Ordinance is approved as to form.

Thank you,

Ana Flores (she/her)
Deputy City Attorney
Office of City Attorney David Chiu
(415) 554-4661 Direct
Ana.flores@sfcityatty.org

The information in this email is confidential and may be protected by the attorney/client privilege and/or the attorney work product doctrine. If you are not the intended recipient of this email or received this email inadvertently, please notify the sender and delete it.

From: Gee, Natalie (BOS) <natalie.gee@sfgov.org>
Sent: Tuesday, December 14, 2021 2:52 PM
To: BOS Legislation, (BOS) <bos.legislation@sfgov.org>
Cc: Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Flores, Ana (CAT) <Ana.Flores@sfcityatty.org>; Shen, Andrew (CAT) <Andrew.Shen@sfcityatty.org>; Pearson, Anne (CAT) <Anne.Pearson@sfcityatty.org>
Subject: Walton - Introduction - Open Source Voting Legislation

Good afternoon Clerk Team,

Attached is President Walton's introduction form, legislation, and legislative digest on Open Source Voting. We will be issuing a 30-day waiver for this ordinance.

I've CC'ed President Walton and DCA Ana Flores to confirm their signatures.

Thank you,
Natalie

Natalie Gee 朱凱勤, Chief of Staff
Supervisor Shamann Walton, District 10
President, Board of Supervisors
1 Dr. Carlton B. Goodlett Pl, San Francisco | Room 282
Direct: 415.554.7672 | **Office:** 415.554.7670

From: Flores, Ana (CAT) <Ana.Flores@sfcityatty.org>
Sent: Tuesday, December 14, 2021 12:18 PM

To: Gee, Natalie (BOS) <natalie.gee@sfgov.org>; SHEN, ANDREW (CAT) <Andrew.Shen@sfcityatty.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>
Subject: Open Source Voting Legislation Final Documents for Introduction - attached

Natalie,

Attached you will find (1) OSV Pilot Ordinance and (2) OSV Pilot Legislative Digest for introduction. Please let me know if you have any questions. It has been a pleasure working with you.

Regards,

Ana Flores (she/her)
Deputy City Attorney
Office of City Attorney David Chiu
(415) 554-4661 Direct
Ana.flores@sfcityatty.org

1   [Municipal Elections Code - Open Source Voting]

2

3   **Ordinance amending the Municipal Elections Code to require the Director of Elections**

4   **to submit information documenting the City's intended open source voting pilot**

5   **program to the California Secretary of State, on behalf of the Board of Supervisors,**

6   **and, upon approval of the Secretary of State, to implement such a system for use at the**

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11   subsections or parts of tables.

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13   Be it ordained by the People of the City and County of San Francisco:

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15   Section 1. The Municipal Elections Code is hereby amended by adding Article XII,

16   consisting of Sections 1200, 1201 and 1202, to read as follows:

17

18   _ARTICLE XII: OPEN SOURCE VOTING PILOT PROGRAM_

19   _SEC. 1200. FINDINGS._

20   _(a) Since 2007, the Board of Supervisors ("Board") has shown interest in developing and using_

21   _open source voting systems in the City and County of San Francisco ("the City"). In 2007, the City_

22   _adopted Resolution No. 330-07, supporting an investigation into the feasibility of an open source voting_

23   _system. In 2008, the City enacted Ordinance No. 268-08, creating a Voting Systems Task Force_

24   _("VSTF") that provided the City with recommendations on models for development of a voting system,_

25   _including proprietary, disclosed, and open source software and hardware. In June 2011, the VSTF_

1 *issued "Recommendations on Voting Systems for the City and County of San Francisco," a report*

2 *summarizing their recommendations. This report is available with the Clerk of the Board in File No.*

3 *110805. In 2014, the City adopted Resolution No. 460-14, committing the City to work with other*

4 *jurisdictions and organizations to create new voting systems using open source software. The*

5 *Elections Commission ("Commission") has also passed resolutions in support of open source voting in*

6 *2007, 2015, and 2018. These Commission resolutions are with the Clerk of the Board in the file for the*

7 *ordinance establishing this Article XII, File No. __.*

8 *(b) Under California Elections Code Section 19209, to conduct an open source pilot program,*

9 *the Board, without formally adopting a voting system, may provide for the experimental use of the*

10 *voting system in a pilot program held in one or more precincts at a single election. Among other*

11 *criteria, the voting system must meet the requirements of regulations adopted by the California*

12 *Secretary of State ("SOS"). Under the California Elections Code, the Board must submit to the SOS a*

13 *plan for the pilot program no later than nine months before the election at which the pilot program is*

14 *proposed to be conducted; after submittal of such a plan, the SOS would have up to three months to*

15 *approve or reject it. But, as of December 14, 2021, the SOS had not yet issued the regulations required*

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19 *with the Clerk of the Board in File No. ___. The letter also explained that while regulations have not*

20 *yet been adopted, there are two available paths to move forward with an open source pilot program.*

21 *First, the City or the open source voting system provider may submit a voting system for testing and*

22 *review for certification by the SOS. Second, the City or the open source voting system provider may*

23 *outline and document the intended voting system equipment, implementation, and use, and provide that*

24 *information to the SOS for feedback.*

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1   *(d) As of December 14, 2021, the SOS had not approved a pilot program for an open source or*

2   *disclosed source voting system. The City is hoping to be the first to conduct a pilot program in*

3   *conjunction with a future election. Conducting this pilot program would advance the Board's and the*

4   *Commission's long-term goal of moving towards open source voting systems for City elections.*

5   ***SEC. 1201. DEFINITIONS.***

6   *For purposes of this Article XII, the following terms have the following meanings:*

7   *"Ballot marking device" shall mean voting equipment used by voters to record votes on paper*

8   *ballots.*

9   *"Disclosed source voting system" shall mean a voting system subject to licenses that allow the*

10   *public to review all of its source code and the ability to share all source code with other parties.*

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18   *"Secretary of State" shall mean the California Secretary of State.*

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20   *original programming statements are expressed in a source language (e.g. C++, C#, Visual Basic or*

21   *Java) which must be compiled or assembled and linked into equivalent machine-executable object*

22   *code, thereby resulting in an executable software program.*

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24   *or any combination of these used for casting a ballot, tabulating votes, or both. "Voting system" does*

25   *not include a remote accessible vote by mail system.*

1 ***SEC. 1202. SUBMISSION OF PLAN FOR INTENDED OPEN SOURCE VOTING PILOT***

2 ***PROGRAM .***

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5 *Hall Voting Center for the November 8, 2022 Consolidated General Election. The Director of*

6 *Elections shall have discretion to decide if more than one ballot marking device will be utilized during*

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22 *how the system will be implemented and used by the Department of Elections and poll workers. The*

23 *use procedures shall conform to the SOS's template available on the SOS website. This template is on*

24 *file with the Clerk of the Board in File No.____.*

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5   Mayor's veto of the ordinance.

6

7   APPROVED AS TO FORM:
    DAVID CHIU, City Attorney
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9   By: /s/_____
            ANA FLORES
10   Deputy City Attorney

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